

**MINUTES OF THE  
SENATE JUDICIAL CONFIRMATION COMMITTEE**  
Tuesday, March 10, 2009 – 6:00 p.m. – Room 445 State Capitol

**Members Present:**

Sen. Scott K. Jenkins, Chair  
Sen. Jon J. Greiner  
Sen. Lyle W. Hillyard  
Sen. Karen Mayne  
President Michael G. Waddoups

**Staff Present:**

Mr. John L. Fellows, General Counsel  
Mr. Jerry D. Howe, Policy Analyst  
Ms. Amanda K. Majers, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Jenkins called the meeting to order at 6:16 p.m. The Committee introduced themselves to the candidates and the audience.

**2. Interview of Mr. Mark R. DeCaria**

Mr. DeCaria was placed under oath by Mr. Howe.

The candidate introduced himself and his family. Mr. DeCaria stated that he had practiced law in Ogden for four years and then became a prosecutor for Ogden City. He represented the city in civil matters concerning the planing commission, real-estate development, and the board of adjustments. Mr. DeCaria told the Committee that he has been the Weber County attorney since 1993. He informed the Committee that he applied for the bench because his experience as a county attorney has prepared him to sit in judgement on matters that he previously presented before the court.

**MOTION:** Sen. Waddoups moved to close the meeting for the purpose of discussing the character, professional competence, or physical or mental health of Mr. Mark R. DeCaria. The motion passed unanimously.

**MOTION:** Sen. Hillyard moved to open the meeting. The motion passed unanimously.

Sen. Jenkins inquired about Mr. DeCaria's position on judicial activism.

Mr. DeCaria stated that judicial activism is a thing to be feared because it damages the reliability and predictability of the justice system. He claimed that his only agenda would be to seek justice and apply the law fairly in all situations. He further stated that he has not been an activist prosecutor and would not be an activist judge.

President Waddoups asked how Mr. DeCaria would react to a situation where the law is silent on an issue.

Mr. DeCaria responded that he would apply the law as it is given by the Legislature, not use the law to reach a personal goal. He stated that he would educate himself about an issue before reaching a decision and would then apply the most limited ruling.

President Waddoups asked Mr. DeCaria if there was anything in his background that would bring disgrace to the judiciary or the state if it were known.

Mr. DeCaria replied that there was not.

Sen. Hillyard questioned Mr. DeCaria about his opinion concerning death penalty cases.

Mr. DeCaria stated that the death penalty is the law of the land and an appropriate result to heinous crimes, and he affirmed that he would pursue the death penalty when necessary.

Sen. Hillyard inquired about Mr. DeCaria's view about child custody.

Mr. DeCaria stated that the splitting of families was one of the most difficult situations that he had to deal with as a prosecutor and stated that it would be difficult as a judge as well. He expressed that men are equally capable of being the custodial parent and indicated that he would look to the qualifications and character of each parent to determine which would be the best custodial parent.

Sen. Mayne observed that Mr. DeCaria appears to be very humble, and she expressed her hope that he would bring his good qualities to the bench. She praised him for not allowing his political party affiliation to become known in his professional capacity. Sen. Mayne asked Mr. DeCaria his opinion of forgiveness in the judicial system concerning minors and their use of drugs.

Mr. DeCaria told the Committee that juvenile court is all about forgiveness and exhausts all options to treat minors. He expressed his belief that a juvenile record should not hamper a person into adulthood, but stated that juvenile records are often used to determine sentences in adult court based on whether the offender has improved his or her behavior.

Sen. Greiner observed that the audience is often a good indicator of the judicial candidate and declared that the audience present at the meeting is a testament to Mr. DeCaria's character because they are from both political parties and other diverse groups of the community.

**MOTION:** Sen. Greiner moved to recommend to the full Senate the confirmation of Mr. DeCaria as a judge in the Second District Court. The motion passed unanimously.

### **3. Other Items / Adjourn**

**MOTION:** President Waddoups moved to adjourn. The motion passed unanimously.

Chair Jenkins adjourned the meeting at approximately 8:00 p.m.